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Ezra W Reese
Phone 202/434.1616
Fax: 202/654 9109
Email: ereese@perkinscoie.com

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607 Fourteenth Street N.W.
Washington, DC 20005-2011
PHONE 202 628 6600
FAX 202 434.1690
www.perkinscoie.com

March 3, 2005

VIA FACSIMILE

Kim Collins, Esq.
Office of General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: MUR 5641

Dear Ms. Collins:

On behalf of John Kerry for President, Inc. and Shrum, Devine & Donilon, Inc., this letter is submitted in response to the complaint filed by Iris G. Rossi ("the Complaint") and subsequently labeled MUR 5461. The Complaint should be immediately dismissed.

The Commission may find "reason to believe" only if a complaint sets forth sufficient specific facts, which, if proven true, would constitute a violation. See 11 C.F.R. §§ 111.4(a), (d) (2004). Unwarranted legal conclusions from asserted facts or mere speculation will not be accepted as true, and provide no independent basis for investigation. See Commissioners Mason, Sandstrom, Smith and Thomas, Statement of Reasons, MUR 4960 (Dec. 21, 2001).

The Complaint argues that Respondents unlawfully reproduced Ms. Rossi's film about Senator Kerry, and that "general concepts" were also used to create political advertisements for Senator Kerry's campaign. First, the Complaint identifies "no source of information that reasonably gives rise to a belief in the truth of the allegations presented." *Id.* The Complaint states that the complainant has "received reports from reliable sources all over the country" concerning misappropriation of her film, yet the Complaint gives the names of no witnesses that may be interviewed by the Commission, much less affidavits. The Complaint omits the agreement (which granted the campaign a non-exclusive license) reached between the Kerry campaign and Ms. Rossi concerning her film, in violation of 11 C.F.R. § 111.4(d)(4). Insofar as the film in question was a biography, the "general concepts" of the film were in fact the historical details of the life

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of Senator Kerry, ideas over which Ms. Rossi cannot claim ownership. In short, the Complaint does not provide sufficient information to find reason to believe that a violation of law has occurred.

Perhaps most importantly, the Complaint does not allege any violations of the Federal Election Campaign Act of 1971, as amended, and chapter 95 or 96 of title 26. *See* 2 U.S.C. § 437g(a)(1) (2004); 11 C.F.R. § 114.4(d)(3). The Complaint alleges violation of intellectual property law, and arguably a breach of contract; however, it does not allege any violation of law over which the Commission has jurisdiction. On this ground alone the complaint should be summarily dismissed.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Marc E. Elias', is written over the typed name.

Marc E. Elias
Ezra W. Reese
Counsel to John Kerry for President, Inc.
Shrum, Devine & Donilon, Inc.

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